

## **Rule 28, Ariz. R. Crim. P. – Retention and destruction of records and evidence**

### **MOTION TO RELEASE EXHIBITS**

If a victim's property has been admitted into evidence at trial, the evidence can be returned to the victim after trial if the property can be adequately portrayed through a photograph.

The State of Arizona, through undersigned counsel, pursuant to A.R.S. § 13-4429, moves the Court to order the release of certain exhibits to the deceased victim's family. This motion is supported by the following Memorandum of Points and Authorities and the Court's files in this matter.

#### **MEMORANDUM OF POINTS AND AUTHORITIES**

##### **I. Facts:**

The defendant was originally charged with Murder in the First Degree, two counts of Armed Robbery, and Aggravated Assault. During his trial in July, 1992, a plea agreement was reached and the defendant was sentenced pursuant to that plea. This conviction was set aside. In October, 1996, the defendant entered a new plea agreement and was sentenced pursuant to that plea agreement.

There are presently no Petitions for Post Conviction relief pending and the time for direct appeal has passed.

During the trial, a number of the victim's personal effects were marked and received as evidence. The victim's family has requested the return of those personal effects. They are:

1. Clothing worn by the victim, Exhibit Number ---
2. Shoes worn by the victim, Exhibit Number ---
3. Picture of the victim, Exhibit Number ---
4. Wallet insert belonging to the victim, Exhibit Number ---
5. Cash belonging to the victim, Exhibit Number ---

## **II. Law:**

A.R.S. § 13-4429(B) states:

If a victim's property has been admitted as evidence during a trial or hearing, the court may order its release to the victim if a photograph can be substituted. If evidence is released pursuant to this subsection, the defendant's attorney or investigator may inspect and independently photograph the evidence before it is released.

Therefore A.R.S. § 13-4429(B) permits the return of these items if a photograph may be substituted for the actual exhibit. All of the above-described exhibits may be adequately portrayed by a photograph.

In addition, Rule 28.2(c), Ariz. R. Crim. P., provides that items used in prosecuting a case be "returned to the legal owner unless the owner's whereabouts are unknown, or the owner is unwilling to accept it." In this case, the legal owners – the victim's survivors – have expressed a desire to have the property returned to them.

## **III. Conclusion**

For the reasons set forth in the Memorandum, the State asks this Court to order the release of the listed items of evidence to the Maricopa County Attorney's Office so that the State can photograph those items, place the photographs into evidence, and return the items to their lawful owners.